

**REMARKS****I. Overview**

Claims 1-11 are pending in the present application. New claim 11 has been added herein. No new matter has been added to the application. Applicant respectfully requests reconsideration of the claims in view of the following remarks.

The issues raised by the Examiner in the current Office Action dated December 2, 2008 are as follows:

- Claims 1-4 and 6-10 have been rejected under 35 U.S.C. § 102(e) as assertedly being anticipated by U.S. Patent No. 6,973,043 to Farooq, (hereinafter “Farooq”); and
- Claim 5 has been rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over Farooq in view of U.S. Patent No. 6,381,721 to Warren, (hereinafter “Warren”).

Applicant respectfully traverses the outstanding claim rejections and requests reconsideration and withdrawal in light of the amendments and remarks presented herein.

**II. Amendments**

New claim 11 is added herein. No new matter has been added. Support for claim 11 can be found in the original application (published as US 2002/0067743 A1) at least in paragraphs [0033], [0039], [0040], and Figure 6.

**III. Claim Rejections under 35 U.S.C. § 102(e)**

Independent claims 1 and 6 stand rejected under 35 U.S.C. § 102(e) as assertedly being anticipated by the Farooq patent. It is the object of the Farooq reference to reduce the complexity of a test system by replacing the media independent interface (MII) connection to a test instrument with a less complex interface. (Col. 1, lns. 60-63). In particular, Farooq discloses converting data signals from a high-speed MII interface into analog based signals for transmission on twisted pair media. (Col. 2, lns. 15-17). Farooq does not attempt to allow testing of or access to particular layers of a multi-layer protocol.

Farooq discloses sending and receiving data signals across low-speed MII interface 42 between network logic 36 and first test logic 38. (Col. 3, lns. 25-28). Network logic 36

performs network operations to simulate a network switch. (Col. 3, lns. 16-20). First test logic 38 converts the data received from logic 36 via MII interface 42 to a IEEE 802.3-compliant data stream on MII interface 44. (Col. 3, lns. 32-37). Second test logic 40 converts the data signals on MII interface 44 to analog-based signals for transmission on twisted pair media 46 to test instrument 18'. (Col. 3, lns. 48-53). The binary data streams on MII interface 44 are converted to analog current on the twisted pair media by output driver 74. (Col. 4, lns. 22-25). Farooq does not teach or disclose transmitting individual protocol layers or less than all of the layers across the MII interfaces 42, 44 or twisted pair 46. Farooq merely changes the type of physical layer used to connect to test instrument 18' to make the system less complex.

Claim 1 recites:

A circuit for testing a communication system that is subdivided into functional layers comprises a port that allows communication by a test apparatus **directly** with any layer that is higher than a first layer of the functional layers **without the communication previously having to pass through the first layer.**

Claim 6 recites:

A method for testing a switch for a telecommunication network that is subdivided into functional layers . . . providing the switch with a circuit arrangement having a port that allows communication by a test apparatus **directly** with any layer that is higher than a first layer of the functional layers **without the communication previously having to pass through the first layer.**

The Farooq patent does not disclose “communication by a test apparatus directly with any layer that is higher than a first layer.” Instead, in Farooq, test instrument 18' communicates with the functional layers on network logic (switch) 36 across three interfaces 42, 44, 46 and two conversion processes 38, 40. The digital data signals associated with the functional layers in network logic (switch) 36 are converted to analog signals before reaching Farooq's test instrument 18'. Accordingly, it is clear from the teaching of Farooq that test instrument 18' does not communicate directly with any functional layer that is higher than a first layer.

Moreover, Farooq does not teach communication “without the communication previously having to pass through the first layer” as required in the independent claims. The claimed first layer is a physical layer. Farooq does not teach or suggest that less than the entire protocol stack would be used on the MII interfaces. In particular, Farooq does not teach or suggest transmitting

individual or partial protocol layers on the MII interfaces 42 and 44 or twisted pair 46. The MII interface 44 complies with the IEEE 802.3 standard (col. 3, lns. 31-37) and, therefore, would include a physical layer for transporting the data outside the switch 36. MII interfaces 42 would also comprise a physical layer outside switch 36. Twisted pair media 46 is physical layer for carrying analog signals. The signals carried on the MII interfaces 42 and 44 or twisted pair 46 are “network data” generated by network logic 36, which acts as a network switch 14. (Col. 3, lns. 5-28). Farooq does not teach or suggest eliminating the physical layer, instead the Farooq system merely changes the type of physical layer used by the network data in a test configuration.

The Farooq patent fails to disclose each and every element of independent claims 1 and 6. Applicant respectfully requests that the rejections based upon the Farooq reference be withdrawn and the claims passed to allowance.

#### **IV. Conclusion**

Claims 2-5 and 7-10 depend from independent claims 1 and 6, respectively, and add further limitations. It is respectfully submitted that these dependent claims are allowable by reason of depending from an allowable claim as well as for adding new limitations.

Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Applicant's attorney at 972-732-1001 so that such issues may be resolved as expeditiously as possible. No fee is believed due in connection with this filing. However, should one be deemed due, the Commissioner is hereby authorized to charge, or credit any overpayment, Deposit Account No. 50-1065.

Respectfully submitted,

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Date

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